

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DAN VITALE</b>	)	
Claimant	)	
VS.	)	
	)	
<b>LAWRENCE BATTERY COMPANY</b>	)	Docket No. 1,001,126
Respondent	)	
AND	)	
	)	
<b>AIG CLAIM SERVICES, INC.</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals the November 20, 2002 preliminary hearing Order of Administrative Law Judge Brad E. Avery. Claimant was awarded temporary total disability compensation after the Administrative Law Judge determined that the intervening injury alleged by respondent in April of 2002 was not the cause of claimant's ongoing need for medical treatment or temporary benefits.

**ISSUES**

Did claimant suffer an intervening accident sufficient to relieve respondent of the responsibility for the alleged accident of November 12, 2001?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant initially suffered accidental injury on November 12, 2001, while lifting batteries for respondent. The batteries have been described as weighing anywhere from 35 to 120 pounds. It is acknowledged that claimant did not experience symptoms until the following morning when he attempted to get out of bed and could not.

Claimant initially received treatment from chiropractor Dennis L. Anthony, D.C. Dr. Anthony treated claimant on three separate occasions, November 14, 16 and 21, 2001, finding claimant to be experiencing significant low back pain, with intermittent pain into his legs. Dr. Anthony diagnosed malalignment in the right lower lumbar spine. Claimant's last recorded treatment with Dr. Anthony was November 21, 2001. Claimant then was terminated from his employment with respondent on November 26, 2001, due to attendance problems. He, shortly thereafter, began working for Affinatas, a telemarketing firm.

On or about April 4, 2002, claimant bent over to pick up a Styrofoam cooler, which he described as being empty and weighing approximately one pound. Claimant alleges he suffered symptoms in his upper back for which he sought chiropractic treatment again with Dr. Anthony. The medical records of Dr. Anthony contemporaneous with that situation indicate treatment was provided to claimant's low back.

Shortly thereafter, claimant was referred to orthopedic surgeon William A. Bailey, M.D. Claimant ultimately underwent a lumbar laminectomy at the L4-L5 level on October 14, 2002, after a series of epidural injections failed to resolve his problems.

The Board acknowledges the record is in conflict regarding when and where claimant's symptoms occurred and whether he suffered an intervening injury. However, the intervening injury as described by claimant appeared to be rather mild in comparison to the work he performed for respondent.

Additionally, the May 2, 2002 letter from Dr. Anthony, who has been treating claimant off and on since the initial injury, indicates that claimant injured his back while lifting at work on or around November 13, 2001, and that initial injury is the basis for his ongoing symptoms.

The Board finds that claimant has proven, for preliminary hearing purposes, that his ongoing symptoms are connected to the initial November 12, 2001 injury suffered with respondent. Therefore, the Order of the Administrative Law Judge should be affirmed.

As is always the case, preliminary hearing findings are not binding in a full hearing on the claim, but are subject, instead, to a full presentation of the facts.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated November 20, 2002, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2003.

---

BOARD MEMBER

c: Neil A. Dean, Attorney for Claimant  
Matthew S. Crowley, Attorney for Respondent  
Brad E. Avery, Administrative Law Judge  
Director, Division of Workers Compensation